

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

NEXTPOINT, INC.,)
)
Plaintiff,)
)
v.) Case No. 08-CV-4593
)
NEXTPOINT NETWORKS, INC.,) Honorable Blanche M. Manning
)
Defendant.) Magistrate Judge Maria Valdez

JOINT INITIAL STATUS REPORT

Plaintiff Nextpoint, Inc., by its attorneys, Novack and Macey LLP, and Defendant NextPoint Networks, Inc., by its attorneys, Jenner & Block LLP and Morrison & Foerster LLP (admission *pro hac vice* pending), jointly submit this Joint Initial Status Report pursuant to Judge Valdez' August 28, 2008, Order setting this case for an Initial Status Hearing on September 3, 2008 at 9:30 a.m.

1. Summary of Claims Asserted

Plaintiff's complaint asserts that it had been using its trade name and design mark for approximately two years when Defendant began doing business using Plaintiff's trade name and a design mark that is nearly identical to Plaintiff's. Plaintiff's seven-count complaint contains claims for: (i) Unfair Competition in Violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a); (ii) Trademark Dilution in Violation of Section 43(c) of the Lanham Act, 15 U.S.C. §1125(c); (iii) Cybersquatting in Violation of Section 43(c) of the Lanham Act, 15 U.S.C. §1125(c); (iv) Violation of the Illinois Anti-Dilution Act, 765 ILCS 1036/65; (v) Violation of the Illinois Uniform Deceptive Practices Act, 815 ILCS 510/2; (vi) Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/2; and (vii) Illinois Common Law Unfair Competition and

Trademark Infringement. The Complaint was served on August 15, 2008, making Defendant's Answer due on or before September 4, 2008. Defendant intends to file its Answer no later than that date. To date, no counterclaim or third party complaint has been filed.

2. Brief Statement of Relief Sought

Plaintiff is seeking a preliminary and permanent injunction preventing Defendant from using: (i) the name "Nextpoint," (ii) Defendant's allegedly infringing design mark; and (iii) any mark that is confusingly similar to Plaintiff's mark. Plaintiff is also seeking an order requiring Defendant to abandon an application for a trademark that Plaintiff maintains would infringe upon Plaintiff's mark. Further, Plaintiff is seeking an order requiring Defendant to publicly acknowledge that its goods and services offered under the "Nextpoint" name and/or the allegedly infringing mark are not sponsored or endorsed by Plaintiff and that Plaintiff is not in any way associated with Defendant. Plaintiff also seeks its attorneys' fees, costs and disbursements, as well as the other relief as described in its complaint.

In its Answer, which Defendant will file on September 4, 2008, Defendant will deny that Plaintiff is entitled to any relief and will raise affirmative defenses asserting: (i) Plaintiff's trademarks are neither inherently distinctive nor have they acquired distinctiveness; and (ii) Defendant has not infringed on Plaintiff's trademarks. Defendant will ask the Court to enter judgment for the Defendant and will seek its attorneys' fees, costs and disbursements, as well as other relief.

3. Referral Order

The Honorable Blanche M. Manning referred this case to Magistrate Judge Maria Valdez on August 20, 2008. A copy of Judge Manning's referral order is attached hereto as Exhibit A.

4. Status of Briefing on the Matters Referred

Plaintiff filed its motion for preliminary injunction and supporting memorandum on August 19, 2008. No briefing schedule has been entered on that motion and there are no other pending motions. Plaintiff plans to seek an evidentiary hearing on its preliminary injunction hearing that, if the Court's schedule will allow, would conclude no later than October 1, 2008.

Defendant intends to file an Opposition to Plaintiff's Motion for Preliminary Injunction on September 10, 2008, and asks the Court not to set a preliminary injunction hearing until it has considered Defendant's opposition. Defendant maintains that this motion can be dispensed with on the papers, thus saving the parties and the Court valuable time and expense.

5. Discovery

The parties disagree regarding discovery, which has not yet begun. Plaintiff maintains that its preliminary injunction motion and the evidence accompanying it establish the need for an evidentiary hearing. Plaintiff asks that such a preliminary injunction hearing be scheduled to conclude no later than October 1, 2008. Working backwards from that date, Plaintiff believes that both parties should respond to no more than ten interrogatories and produce documents by September 15, 2008. Each side would then produce the witnesses it intends to present at the hearing, and any Fed. R. Civ. P. 30(b)(6) witnesses requested by the opposing party, on or before September 22, 2008.

Defendant contends that there should be no expedited discovery until the Court first considers Defendant's Opposition to Plaintiff's Motion for Preliminary Injunction and determines whether

there is a need for an evidentiary hearing on Plaintiff's motion. If the Court determines that a preliminary injunction hearing should take place, Defendant asks the Court to set the case for a further status conference, as its schedule permits, for the purpose of setting a discovery schedule and a date for a preliminary injunction hearing, if any.

6. Consent to Proceed Before a Magistrate Judge

The parties have not consented to proceed with a trial on the merits before the Magistrate Judge.

7. Deadlines Established by the District Judge

The District Judge has not established any deadlines in this case.

8. Status of Settlement Negotiations

The parties have had settlement discussions since January 2008 but so far have been unable to resolve the case. Defendant requests a settlement conference with the Magistrate Judge.

Respectfully submitted,

NEXTPOINT, INC.

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One of Its Attorneys

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CERTIFICATE OF SERVICE

I, Richard L. Miller II, hereby certify that I caused a copy of the foregoing Joint Initial Status Report to be served on the following by electronically filing the document with the Clerk of the Court using the ECF system:

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on this 2nd day of September 2008.

/s/ Richard L. Miller II

Richard L. Miller II

EXHIBIT A

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**UNITED STATES DISTRICT COURT
FOR THE Northern District of Illinois – CM/ECF LIVE, Ver 3.2.1
Eastern Division**

Nextpoint, Inc.

Plaintiff,

v.

Case No.: 1:08-cv-04593

Honorable Blanche M. Manning

Nextpoint Networks, Inc.

Defendant.

NOTIFICATION OF DOCKET ENTRY

This docket entry was made by the Clerk on Wednesday, August 20, 2008:

MINUTE entry before the Honorable Blanche M. Manning: Plaintiff's motion for preliminary injunction is referred to Magistrate Judge Maria Valdez for a report and recommendation. This case is also referred for a settlement conference, discovery supervision and all non-dispositive motions until filing of dispositive motions. The parties will receive a status date from Magistrate Judge Valdez shortly. No appearance is necessary on 8/21/2008. Mailed and telephoned notice by judge's staff.(srh,)

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